IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AFUA HAMMOND and ANDERSON KNOBLE,	:	CIVIL ACTION
Plaintiffs,	:	
v.	:	No. 11-2666
KATHLEEN BAUSMAN, et al.,	:	
Defendants.	:	

MEMORANDUM

ROBERT F. KELLY, Sr. J. **SEPTEMBER 30, 2011**

Presently before the Court is Defendants, Kathleen Bausman, Alejandro Mayorkas, Janet Napolitano, and Eric Holder's,[1] ("Defendants") Motion to Dismiss the Complaint of Plaintiffs, Aufa Hammond and Anderson Knoble ("Plaintiffs") pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction. For the reasons set forth below, this Motion will be granted.

I. BACKGROUND

Plaintiffs have brought suit against various officials of the United States Department of Homeland Security and Eric Holder, Attorney General of the United States. In their Complaint, Plaintiffs seek, among other things, to have this Court issue a writ of mandamus requiring the

[1]According to the Complaint, Defendant Kathleen Bausman is the District Director for the Philadelphia District of the United States Citizenship and Immigration Services ("CIS") of the Department of Homeland Security ("DHS"), and is responsible for petitions for alien status applications pending in the Philadelphia District. Defendant Alejandro Mayorkas is the Director of CIS. Defendant Janet Napolitano is the Secretary of DHS, and Defendant Eric Holder is the Attorney General of the United States. (Compl. ¶¶ 15-18.)

Defendants to adjudicate and grant Plaintiff, Anderson Knoble's ("Knoble"), Form I-130 Petition for Alien Relative and Plaintiff, Afua Hammond's ("Hammond"), Form I-485 Application for Adjustment of Status.

Plaintiffs assert in their Complaint that Knoble is a United States citizen and Hammond a citizen of Ghana who lawfully entered the United States on a valid visa. (Compl. ¶ 2.) Knoble, subsequently, married Hammond and filed an I-130, Petition for Alien Relative, for Hammond as his wife with the Department of Homeland Security ("DHS"). At this same time, Hammond filed an I-485 Application to Adjust Status to a lawful permanent resident with the DHS based on her marriage to her United States citizen husband. Plaintiffs assert that the Defendants have improperly handled and delayed the processing of this application. (Id.) Plaintiffs further assert that the DHS has improperly denied Knoble's I-130 in bad faith on multiple occasions. Plaintiff acknowledge that they appealed this denial to the Board of Immigration Appeals ("BIA) and that the BIA has affirmed the denial. (Id.)

Plaintiff state that they "therefore seek a grant of the Petition for Alien Relative and to have Afua Hammond's status adjusted by this Court, as Congress has authorized through the Immigration and Nationality Act. See U.S.C. § 1361, regarding an action to compel an officer of the United States to perform his or her duty." (Id. ¶ 4.) Plaintiff further state that they are asking this "Court to declare that the Defendants are violating the due process rights of the Plaintiffs, as well as the Administrative Procedures Act and the immigration laws and regulations, in failing to adjudicate their respective applications." (Id. ¶ 10.)

Knoble filed his I-130 Petition for Alien Relative on June 22, 2007 and Hammond submitted her adjustment of status application on this same date. The United States Citizenship

and Immigration Services ("USCIS") denied Hammond's Form I-485 Application for Adjustment of Status ("Form I-485") on June 24, 2009, and denied Knoble's Form I-130 Petition for Alien Relative ("Form I-130") on August 25, 2010. BIA affirmed this denial on March 21, 2011. On April 20, 2011, Plaintiffs filed this action for Declaratory and Injunctive Relief and/or Writ in the Nature of Mandamus.

II. STANDARD OF REVIEW

Pursuant to Federal Rule of Civil Procedure 12(b)(1), when "considering a motion to dismiss for lack of subject matter jurisdiction, the person asserting jurisdiction bears the burden of showing that the case is properly before the court at all stages of the litigation." Fed. Realty Inv. Trust v. Juniper Props. Group, No. 99-3389, 2000 WL 45996, at *3 (E.D. Pa. Jan. 21, 2000) (citing Packard v. Provident Nat'l Bank, 994 F.2d 1039, 1045 (3d Cir. 1993)). The district court, when reviewing a motion to dismiss for lack of subject matter jurisdiction, "must accept as true the allegations contained in the plaintiff's complaint, except to the extent federal jurisdiction is dependent on certain facts." Id. (citing Haydo v. Amerikohl Mining, Inc., 830 F.2d 494, 496 (3d Cir. 1987)). The district court is not confined to the face of the pleadings when deciding whether subject matter jurisdiction exists. Id. (citing Armstrong World Indus. v. Adams, 961 F.2d 405, 410 n.10 (3d Cir. 1992)). "In assessing a Rule 12(b)(1) motion, the parties may submit and the court may consider affidavits and other relevant evidence outside of the pleadings." Id. (citing Berardi v. Swanson Mem'l Lodge No. 48 of Fraternal Order of Police, 920 F.2d 198, 200 (3d Cir. 1990)). In the case where the defendant attacks jurisdiction with supporting affidavits, "the plaintiff has the burden of responding to the facts so stated." Id. "A conclusory response or a restatement of the allegations of the complaint is not sufficient." Id. (citing Int'l Ass'n of

Machinists & Aerospace Workers v. N.W. Airlines, Inc., 673 F.2d 700, 711 (3d Cir. 1982)).

III. DISCUSSION

1. The Administrative Procedure Act

Plaintiff argue in their Complaint that "Defendant officers of CIS have engaged in unreasonable and extraordinary delay in adjudicating Plaintiffs [sic] applications, in violation of the Administrative Procedures Act." (Compl. ¶ 6.)

The Administrative Procedure Act ("APA") grants a reviewing court the authority to compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). The Supreme Court has clarified that "a claim under § 706(1) can proceed only where a plaintiff asserts that an agency failed to take a discrete agency action that it is required to take." Norton v. S. Utah Wilderness Alliance, 542 U.S. 55, 64 (2004). The Court explained the limited application of § 706(1) by noting that its purpose "is to protect agencies from undue judicial interference with their lawful discretion, and to avoid judicial entanglement in abstract policy disagreements which courts lack both expertise and information to resolve." Id. at 66. In particular, "[t]he prospect of pervasive oversight by federal courts over the manner and pace of agency compliance with [broad] congressional directives is not contemplated by the APA." Id. at 67.

Here, the only action that USCIS was legally "required" to take was action upon Plaintiffs' Form I-130 and Form I- 485 applications. As acknowledged by the Plaintiffs themselves in their Complaint, the USCIS has already acted these applications when it issued its I-130 denial on August 25, 2010 and its I- 485 denial on June 24, 2009, and then affirmed on appeal by the BIA on March 21, 2011. (Compl. ¶ 2.) Thus, Plaintiffs have already received the

relief that they seek in their Complaint. Plaintiffs do assert that the "Defendant officers of CIS have engaged in unreasonable and extraordinary dely in adjudicating Plaintiffs [sic] applications." (Compl. ¶ 6.) However, Plaintiffs have offered nothing more than allegations that the applications were unreasonably delayed, and fail to present any evidence of such. As stated above, "a claim under § 706(1) can proceed only where a plaintiff asserts that an agency failed to take a discrete agency action that it is required to take." Norton, 542 U.S. at 64. Here, the USCIS acted on the applications and there is no evidence that there was unreasonable delay in doing so. Thus, this Court lacks jurisdiction under the APA to grant Plaintiffs' requested relief.

2. Mandamus

This Court also does not have the jurisdiction to review Plaintiffs' claims under the Mandamus Act. Congress has granted federal courts the power to issue writs of mandamus by the All Writs Act, 28 U.S.C. § 1651. Mandamus is a "drastic" remedy, "to be invoked only in extraordinary situations." Allied Chem. Corp. v. Daiflon, Inc., 449 U.S. 33, 34 (1980). Mandamus "has traditionally been used in the federal courts only to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so." Will v. United States, 389 U.S. 90, 95 (1967). In short, "only exceptional circumstances amounting to a judicial usurpation of power will justify the invocation of this extraordinary remedy." Id. Mandamus is available only when "(1) the plaintiff's claim is clear and certain; (2) the duty is ministerial and so plainly prescribed as to be free from doubt; and (3) no other adequate remedy is available." Guerrero v. Clinton, 157 F.3d 1190, 1193 (9th Cir. 1998); Oregon Natural Resources Council v. Harrell, 52 F.3d 1499, 1508 (9th Cir.1995). Mandamus offers a remedy only where the government official or agency owes the Plaintiffs a "clear

nondiscretionary duty." Heckler v. Ringer, 466 U.S. 602, 616 (1984); see also Kerr v. United States District Court, 426 U.S. 394, 402–403 (1976).

As discussed above, the only nondiscretionary, ministerial duty that USCIS owed Plaintiff was the duty to act upon their Form I-130 and Form I-485 applications. USCIS acted upon the applications when it denied the applications and the BIA affirmed. Accordingly, the Defendants have withheld no action, and thus, owe Plaintiffs no further "clear and nondiscretionary" legal duties. Therefore, this Court lacks jurisdiction under the Mandamus Act to grant Plaintiffs any further relief.

3. Arbitrary and Capricious

Under the APA, judicial review is usually limited to determining whether agency action is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." § 706(2)(A); United States v. Bean, 537 U.S. 71, 77 (2002). Under the "arbitrary and capricious" standard the scope of review is a narrow one. A reviewing court must "consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment. . . . Although this inquiry into the facts is to be searching and careful, the ultimate standard of review is a narrow one. The court is not empowered to substitute its judgment for that of the agency." Bowman Transp., Inc. v. Arkansas-Best Freight System, Inc., 419 U.S. 281, 285-86 (1974); Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 416 (1971). The agency must articulate a "rational connection between the facts found and the choice made." Burlington Truck Lines v. United States, 371 U.S. 156, 168 (1962). The Supreme Court further stated in Bowman Transp. that "[w]hile we may not supply a reasoned basis for the

agency's action that the agency itself has not given, we will uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned. 419 U.S. at 285-86; see also Colorado Interstate Gas Co. v. FPC, 324 U.S. 581, 595 (1945).

The Supreme Court has defined "substantial evidence" in the context of court review of an administrative agency decision as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consolo v. Federal Maritime Commission,* 383 U.S. 607, 620, 86 S.Ct. 1018, 1026, 16 L.Ed.2d 131 (1966), *quoting Consolidated Edison Co. v. N.L.R.B.,* 305 U.S. 197, 229, 59 S.Ct. 206, 216, 83 L.Ed. 126 (1938). Substantial evidence is "more than a mere scintilla," *Universal Camera Corp. v. N.L.R.B.,* 340 U.S. 474, 477, 71 S.Ct. 456, 459, 95 L.Ed. 456 (1951), but is "something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's findings from being supported by substantial evidence." *Consolo, supra,* 383 U.S. at 620, 86 S.Ct. at 1026.

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ORDER

AND NOW, this 30th day of September, 2011, upon consideration of Defendants, Kathleen Bausman, Alejandro Mayorkas, Janet Napolitano, and Eric Holder's, Motion to Dismiss the Complaint of Plaintiffs, Aufa Hammond and Anderson Knoble (Doc. No. 11), and the Response and Reply thereto, it is hereby **ORDERED** that said Motion is **GRANTED**.

It is **FURTHER ORDERED** that Plaintiffs' Motion for Default Judgment for Failure to Answer the Complaint (Doc. No. 9) is **DENIED** as moot.

BY THE COURT:

/s/ Robert F. Kelly
ROBERT F. KELLY
SENIOR JUDGE